REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-23 are presently pending in this case. Claims 1, 3, 15, 17, and 19 are amended by the present amendment. As amended Claims 1, 3, 15, 17, and 19 are supported by the original disclosure,[1] no new matter is added.

In the outstanding Official Action, Claims 15 and 16 were rejected under 35 U.S.C. §101; Claims 1-3, 15, 17-19, and 21-23 were rejected under 35 U.S.C. §103(a) as unpatentable over Yanagihara (U.S. Patent No. 5,835,668) in view of Lane (U.S. Patent No. 5,793,927) and further in view of Kikuchi et al. (U.S. Patent Application Publication No. 20020054754, hereinafter "Kikuchi"); Claim 8 was rejected under 35 U.S.C. §103(a) as unpatentable over Yanagihara in view of Lane and Kikuchi and further in view of Acharya et al. (U.S. Patent Application Publication No. 20030194008, hereinafter "Acharya"); and Claims 9 and 16 were rejected under 35 U.S.C. §103(a) as unpatentable over Yanagihara in view of Lane and Kikuchi and further in view of Mimura (Japanese Patent Application Publication No. 08-031044) and Deangelo (U.S. Patent Application Publication No. 2006010136). However, Claims 4-7, 10-14, and 20 were objected to as being dependent on a rejected base claim, but otherwise were indicated as including allowable subject matter if re-written in independent form.

Applicants gratefully acknowledge the indication that Claims 4-7, 10-14, and 20 include allowable subject matter.

With regard to the rejection of Claims 15 and 16 under 35 U.S.C. §101, Claim 15 is amended to recite "a non-transitory computer readable medium." This amendment is made pursuant to the statement dated January 26, 2010 by U.S.P.T.O. Director Kappos in which

[1]See, e.g., the publication of the specification at paragraph 179.

U.S.P.T.O. Director Kappos states that the U.S.P.T.O. will interpret the term "non-transitory" to exclude signals, and thus describe only a hardware medium. Accordingly, Claims 15 and 16 are in compliance with all requirements under 35 U.S.C. §101.

With regard to the rejection of Claims 1, 15, and 17 as unpatentable over Yanagihara in view of Lane and Kikuchi, that rejection is respectfully traversed.

Amended Claim 1 recites in part:

> setting means for setting, on the basis of said content data time information checked by said checking means, bit rates with which said content data is recorded from said information processing apparatus to a predetermined removable recording medium, the setting means selecting the bit rates such that an amount of data to be stored on the predetermined removable recording medium is less than a capacity of a predetermined removable recording medium based on a comparison between a resulting amount of data for selected bit rates and the capacity of a predetermined removable recording medium, ***said content data including moving image data and audio data corresponding thereto, and said setting means reduces the audio data bit rate from an original audio data bit rate to a reduced audio data bit rate without reducing the moving image bit rate if a resulting original amount of data for original audio and moving image bit rates exceeds the capacity of the predetermined removable recording medium***.

The outstanding Office Action conceded that Yanagihara and Lane do not teach or suggest "setting means" as recited in Claim 1 and cited paragraphs 51, 105, and 137 of Kikuchi as describing this feature.[2] Kikuchi describes a recording rate setting device which determines a recording bit rate by dividing the remaining recording capacity by the recording time. Presumably, when recording audio and video data together, the audio and video data rates are added together and proportionately determined by the device of Kikuchi. Further, as the device of Kikuchi calculates a recording bit rate by dividing the remaining recording capacity by the recording time, a resulting original amount of data for original audio and moving image bit rates ***never*** exceeds the capacity of the predetermined removable recording

[2]See the outstanding Office Action at pages 4-5.

medium, and thus the device of Kikuchi never "***reduces the audio data bit rate*** from an original audio data bit rate to a reduced audio data bit rate ***without reducing the moving image bit rate*** if a resulting original amount of data for original audio and moving image bit rates exceeds the capacity of the predetermined removable recording medium" as recited in amended Claim 1. Thus, Kikuchi cannot teach or suggest "setting means" as recited in amended Claim 1. Consequently, as the proposed combination does not teach or suggest "setting means" as recited in amended Claim 1, Claim 1 (and Claims 2-14 and 22 dependent therefrom) is patentable over Yanagihara in view of Lane and Kikuchi.

Amended Claim 15 recites in part "said setting includes ***reducing the audio data bit rate*** from an original audio data bit rate to a reduced audio data bit rate without reducing the moving image bit rate if a resulting original amount of data for original audio and moving image bit rates exceeds the capacity of the predetermined removable recording medium." As noted above, Kikuchi describes calculating a recording bit rate by dividing the remaining recording capacity by the recording time, and thus a resulting original amount of data for original audio and moving image bit rates ***never*** exceeds the capacity of the predetermined removable recording medium. Therefore, Kikuchi cannot teach or suggest "setting" as defined in amended Claim 15. Consequently, Claim 15 (and Claims 16 and 23 dependent therefrom) is also patentable over Yanagihara in view of Lane and Kikuchi.

Amended Claim 17 recites in part "***said setting unit is configured to reduce the audio data bit rate*** from an original audio data bit rate to a reduced audio data bit rate *without reducing the moving image bit rate* if a resulting original amount of data for original audio and moving image bit rates exceeds the capacity of the predetermined removable recording medium." As noted above, the device of Kikuchi calculates a recording bit rate by dividing the remaining recording capacity by the recording time, and thus a resulting original amount of data for original audio and moving image bit rates ***never*** exceeds the capacity of the

predetermined removable recording medium. Thus, it is respectfully submitted that Kikuchi does not teach or suggest "a setting unit" as defined in amended Claim 17. Consequently, amended Claim 17 (and Claims 18-21 dependent therefrom) is patentable over Yanagihara in view of Lane and Kikuchi.

With regard to the rejection of Claim 8 as unpatentable over Yanagihara in view of Lane and Kikuchi and further in view of Acharya, it is noted that Claim 8 is dependent from Claim 1, and thus are believed to be patentable for at least the reasons discussed above. Further, it is respectfully submitted that Acharya does not cure any of the above-noted deficiencies of Yanagihara, Lane, and Kikuchi. Accordingly, it is respectfully submitted that Claim 8 is patentable over Yanagihara in view of Lane and Kikuchi and further in view of Acharya.

With regard to the rejection of Claim 9 and 16 as unpatentable over Yanagihara in view of Lane and Kikuchi and further in view of Mimura and Deangelo, it is noted that Claims 9 and 16 are dependent from Claims 1 and 15, respectively, and thus are believed to be patentable for at least the reasons discussed above. Further, it is respectfully submitted that Mimura and Deangelo do not cure any of the above-noted deficiencies of Yanagihara, Lane, and Kikuchi. Accordingly, it is respectfully submitted that Claim 9 and 16 are patentable over Yanagihara in view of Lane and Kikuchi and further in view of Mimura and Deangelo.

Accordingly, the pending claims are believed to be in condition for formal allowance.

An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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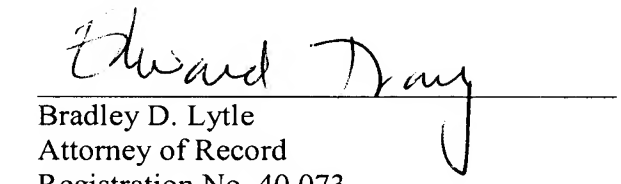

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